

COMMITTEE CONFERENCE AND EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Carlsbad Energy)	07-AFC-9
Center Project)	
_____)	

HILTON GARDEN INN
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CARLSBAD, CALIFORNIA
FRIDAY, MAY 20, 2011
9:02 A.M.

Reported and by:
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PROCEEDINGS

9:02 A.M.

COMMISSIONER BOYD: Good morning, everybody. Welcome to the second day of the California Energy Commission's siting committee evidentiary hearing and committee conference on the Carlsbad Energy Center Project. Everyone I see in the very limited audience was here yesterday, and I don't think I have to repeat too much.

I'm Jim Boyd, the presiding committee member for this siting case. And I'm joined by my hearing advisor on my left, or really just my Advisor, Tim Olson. And on our right, Paul Kramer, our hearing officer who will conduct this hearing for us.

And with no further ado, other than another welcome and thank you, I will turn it over to Mr. Kramer as we pick up where we left off yesterday with agenda items that were scheduled for this morning. Mr. Kramer.

HEARING OFFICER KRAMER: Thank you. Just to confirm, can somebody on the WebEx telephone connection confirm that you're hearing us okay?

MR. WEAVER: This is Casey Weaver. I hear you.

HEARING OFFICER KRAMER: Okay.

MS. FREDINBURG: Absolutely.

HEARING OFFICER KRAMER: Great. Thanks. Just a caution; if you've got noise in the area where you are go

1 ahead and mute your phone on your end. I can do it here,
2 but then you can't un-mute yourself. So it's better if you
3 police your own noise.

4 And with that, where we are is we're continuing
5 the discussion of extraordinary -- the extraordinary public
6 purpose issue. Yesterday we had some discussion and then
7 the parties indicated, at least some of them, that they were
8 going to go off and -- and discuss things among themselves
9 for a little while to see if they could come to at least
10 some better understanding of their positions and what they
11 might be able to do.

12 So let's first hear a report about how that worked
13 out, and then we'll see where we need to go from there.
14 We'll start with Mr. McKinsey.

15 MR. MCKINSEY: I don't like those little foam
16 things. I can't tell when the light's on.

17 We, indeed, we had -- we had a brief workshop
18 right after we closed the record yesterday. And -- and then
19 had, following that brief, very brief workshop we had
20 discussions yesterday here in the room. And then we had
21 another discussion this morning with the city, the --
22 discussing the -- the needs and interests of both NRG and
23 the city and -- and particularly focused on the future of
24 the -- of the -- the existing unit one through five
25 structure, as well as, generally speaking the -- the future

1 of the western portion of the property west of the railroad
2 tracks.

3 And I think we both agreed to say that we've had a
4 positive initial exploration, but we're going to need more
5 time. And we committed to attempting to work together to
6 present back to the committee by the comment deadline
7 something that we could both endorse in terms of condition
8 language that -- that, you know, I think would be acceptable
9 from the committee's perspective, as well, regarding an
10 extraordinary public purpose addition to the project related
11 to the future of four and five and the structure there. We
12 may not. I mean, it's -- all we've had is an initial
13 exploration.

14 And I'll let Mr. Thompson speak from his
15 perspective on behalf of the city. But -- but we were
16 encourage. And if we don't reach agreement then I think
17 we -- we'll both as parties submit again, by the comment
18 deadline, perhaps some dueling options. But I think our
19 goal is to try to -- to -- to find a positive way to provide
20 the committee what they seek in terms of extraordinary
21 public purpose benefit that goes along the lines of -- of
22 what both the city and other parties have desired.

23 HEARING OFFICER KRAMER: Okay. That sounds
24 positive. What -- what the committee is trying to achieve
25 is -- is a way to -- to not have that plant, that old plant

1 sit there for what could be years if, you know, the -- now
2 having viewed intimately the city's planning process I
3 suspect the planning for -- for some sort of replacement use
4 on that site could take quite awhile. And it might take
5 quite awhile to -- to get to the point of starting that
6 process.

7 So what we'd like to see if that the removal of
8 that, you know, big, I don't think eyesore is too -- too
9 unfair a characterization, occur sooner rather than later.
10 And -- and that would definitely be, you know, a positive
11 benefit for the public. And a flat site that doesn't have
12 that on it is going to, at least in our view, remove a lot
13 of the, you know, a lot of the concerns about the -- the
14 visual, well, the -- the visual insufficiencies that are
15 created along the coastline. And then if takes awhile to --
16 to put something else in there then, well, that's, you know,
17 that's not our business anymore because it -- I'm presuming
18 it's not going to be a power plant.

19 MR. MCKINSEY: Hearing Officer Kramer, I'm glad
20 you said that, because there was one thing that didn't come
21 out yesterday accurately or completely in the record. And
22 it really wasn't the right -- I mean, it wasn't a direct
23 subject matter yesterday. It really best falls under the
24 topic we have now. And that is the current need or
25 obligation of units four and five, the -- because that is

1 the constraint.

2 NRG has the same mutual interest of seeing the --
3 the highest and best use of that western parcel. And this
4 project is designed to further that along by -- by what was
5 described, which is a smaller, modern, more efficient
6 facility between I-5 and the railroad tracks.

7 The constraint that is the key struggling point is
8 how do we provide some certainty and clarity and -- and some
9 form of either a pressure or a deadline or both to the
10 future of that building when the units inside it, four and
11 give, are still under a need basis? And they're not under
12 an RMR contract. What SDG&E did was pull them out of the
13 RMR and entered into a tolling agreement for them. And --
14 and so they're under a tolling agreement, and they're
15 primarily still required and needed for voltage support
16 under various conditions on the line that comes down the
17 coast between San Onofre and the larger load center of San
18 Diego.

19 And so right now at this time NRG is not free to
20 shut down four and five. And to do that SDG&E has to
21 release them from that need, and ISO has to concur with
22 that. And -- and ISO is really the key party here, is that
23 CAISO under the new system we've -- we've created throughout
24 the country with independent system operators and -- and
25 regional trading organizations, they really are the

1 determinant of when they can be released. And, of course,
2 under the new structure that we created with AB1X the
3 California Public Utilities Commission has to approve the
4 shutdown of any of these generating units, as well. You
5 have to submit a closure plan. It has to be approved by the
6 California Public Utilities Commission.

7 So what that means is that the -- to shut down
8 four and five, and it will come, and we know it's going to
9 come at some point, it's going to require that -- that ISO
10 bless and endorse that before the PUC would allow them to be
11 shut down. And what -- NRG has never been able to -- to
12 commit to that, simply because they don't control that. And
13 that's been the -- the constraint that has prevented NRG
14 from saying, yes, we can take on a specific obligation or
15 commitment. And -- but I think, you know, we're trying to
16 find a way to -- to give assurances that -- that when that
17 set of events occurs that it will be terminated and torn
18 down.

19 And then secondly, ways to increase either
20 pressure or to ensure that -- that the project owner doesn't
21 have the ability to -- to change their mind and say, well,
22 now we want to seek further operations, that, you know, it's
23 a true good faith and obligatory commitment. And we see the
24 inclusion of a condition in the -- in this decision the --
25 one way to give the city that type of certainty that now the

1 Energy Commission has the ability to -- to -- to enforce
2 that and to say, you know, you made this commitment and
3 you're not following it. And so -- but finding the language
4 that recognizes the need issue.

5 And -- but the other, you know, the once-through
6 cooling changes which are probably going to help drive this
7 forward, as well. And again, this project in many ways
8 facilitates all this, and that works to the advantage.

9 But -- but that's the complicating layer here
10 is -- is how to give certainty when the units aren't
11 released to be shut down at this time.

12 HEARING OFFICER KRAMER: Now is -- is it still
13 the -- still the case that some additional generation needs
14 to come online somewhere in this area in order to allow
15 those to be released, or has that picture changed since --

16 MR. MCKINSEY: That's the -- that's the -- the
17 latest concept. I don't think that we really know at this
18 moment.

19 One of the other issues is that everything is in
20 flux. The -- we've got the Sunrise Powerlink. We've got
21 this idea of increase going to 33 percent. And SDG&E is --
22 is accelerating very hard in trying to increase the
23 penetration of renewables. And -- and they -- they lag
24 between the other two IOUs. And I think that's part of what
25 ISO has to do is has to -- is has to either get a clear

1 hypothetical that they could then authorize the release,
2 or -- or have, you know, an actual, you know, decision.
3 Like if there is more megawatts then they say, okay, now
4 four and five are released.

5 The other -- just the latest kind of interesting
6 layer in all this is the San Onofre Nuclear Power Plant and
7 the increased scrutiny and evaluation being put on it for
8 the very topic we're supposed to shift to next, as an
9 example, the -- the tsunami risk. And -- and so I think ISO
10 in the last couple of months has made, and really since the
11 nuclear incident, has made a couple of statements to that
12 regard regarding, you know, re-scrutinizing this region.

13 And so the end result is that we don't have -- the
14 latest answer we have is that they need more generation in
15 this area in order to release it. And they -- and the
16 problem is often that you have to submit -- and you end up
17 with hypotheticals. And yet to go forward on a project you
18 need certainty. And -- and again, this project could be
19 the -- the thing that gives that certainty because with this
20 project available and online they may then say, okay, now we
21 don't. But they certainly haven't said at this point that
22 that would be enough.

23 COMMISSIONER BOYD: Mr. McKinsey, your -- it is --
24 it is very unfortunate we didn't have some of this
25 discussion yesterday with a much broader and larger audience

1 about the tolling agreement situation relative to units four
2 and five. It might have helped some public to understand
3 the situation even better, and even last night, even that
4 much better. But so be it. It's -- at least it's in the
5 record now and it's understood.

6 I really do appreciate the -- the words you have
7 spoken today and therefore representing the -- the
8 sentiments and the thoughts of NRG on this subject. They're
9 very positive. And I do hope a resolution regarding this
10 can be reached sooner rather than later and continue the --
11 the, what I see and understand as good-faith effort, to
12 address what the public down here feels so strongly about.
13 Mr. Kramer kind of called it a visual disturbance perhaps,
14 rather than a blight on the landscape, but he came close.
15 But nonetheless, that's the way some people feel.

16 A question though. Is SDG&E -- and this -- this
17 may be purely rhetorical because you may not even be able to
18 venture an answer. But is SDG&E likely to want energy from
19 your new units, rather than from units four and five as it
20 relates to why they have tolling agreements even for four or
21 five? Can you say the new units would be more efficient
22 and -- and provide less expensive or no more expensive
23 energy to SDG&E should they want this backup?

24 MR. MCKINSEY: You asked the question really
25 simply at the very beginning, and then -- and then it got

1 more complicated.

2 COMMISSIONER BOYD: Then it got then complicated.

3 MR. MCKINSEY: The first one was are they likely
4 to want this generation more instead of four and five. And
5 I think that, you know, that any electrical engineer would
6 say, sure, yes, that's an easy answer. They're new,
7 efficient, and -- and they have a fast responsive
8 characteristic. And they're located at the same node.

9 Then it got into this question of are they more
10 expensive. And -- and then you start getting into the
11 difference between a steam-based spinning reserve unit and a
12 gas turbine that's really designed more as a peaker response
13 and -- and how you -- you do the pricing between those types
14 of contracts. And -- and so I think that is a lot tougher
15 to figure out. And -- and that's the thing where it's --
16 it's a rhetorical or a hypothetical that gets worked out in,
17 you know, a 100 page power-purchase agreement negotiation
18 that has so many layers to it that I don't think anybody
19 even answers it very clearly afterwards. Just everybody is
20 satisfied with the final arrangement.

21 COMMISSIONER BOYD: Well, I appreciate your
22 response. I knew it was a complicated, maybe impossible
23 question. But - and -- and unfortunately for our limited
24 audience here it's educational to all of us. There are just
25 not enough people hearing this.

1 And -- and my last comment is -- it just dawned on
2 me as you were answering that a larger audience might have
3 understood. I'm not sure they would have appreciated
4 anything I had to say.

5 But when we first did the site visit for this
6 facility a long, long time ago one of the very impressive
7 things to me, and I believe many of the staff of the CEC was
8 your intention to utilize, deploy quick-start capability in
9 this plan, which is something historically we see in simple-
10 cycle peaker plants, which we may have too many of them in
11 this state because they are quick-start, but not nearly as
12 efficient as a combined cycling unite.

13 The fact that your company was going to utilize
14 that technology before it became fashionable was -- was
15 meaningful to us. And you kind of established for me a
16 precedent that I have used in many other settings in having
17 discussions with people about simple-cycle peaker proposals
18 when more and more technology for quick-start and a combined
19 cycle became more apparent to many folks. And I have used
20 you as a little bit of a poster child on more than one
21 occasion to indicate now wait a minute, you know, we're
22 looking at this very sizable facility that has that
23 capability, why can't you do the same.

24 So in any event, not that that means anything, but
25 it -- it suddenly dawned on me that that has been the case

1 and that might as well be in the record here. So enough
2 said. Thank you.

3 HEARING OFFICER KRAMER: Mr. Thompson.

4 MR. THOMPSON: Thank you, Mr. Kramer and
5 Commissioner. The city has a different constituency to
6 answer to. And possibly getting to -- to an endpoint may
7 require us to -- to -- to go through more hoops than a
8 private company.

9 But having said that, we huddled last night and
10 we, I think, had a very fruitful discussion this morning
11 that was open and, I think, focused on getting to an
12 endpoint here. I think we've taken steps to work together
13 and work very hard to try and -- and figure out how the
14 city's needs and NRG's needs can -- can come together.

15 You're absolutely right that I think I can
16 characterize the decommissioning and demolition of the
17 building and units one through five as -- as being
18 extraordinarily important to the -- to the citizens of
19 Carlsbad. And I don't think I'd be telling any secrets to
20 say that that also is very close to the top of our -- of our
21 list.

22 So we -- we made commitments to work together, and
23 I think that -- that that will start immediately. And I
24 think we're committed to try and get the committee something
25 that -- that is workable and gives us comfort that we can go

1 ahead successfully.

2 COMMISSIONER BOYD: Well, I appreciate that.
3 Thank you.

4 HEARING OFFICER KRAMER: Okay. Procedurally, is
5 there any chance that that could be filed a couple days
6 ahead of the comment deadline? That would allow the other
7 parties just a little bit of time to comment, which --

8 MR. MCKINSEY: I think we'll make our best efforts
9 to accomplish that.

10 HEARING OFFICER KRAMER: Okay. If not it -- since
11 they're -- they're probably not going to be participating in
12 your negotiations. And --

13 MR. MCKINSEY: Right.

14 HEARING OFFICER KRAMER: -- it may be that the
15 intervenors are satisfied with the city's efforts on their
16 behalf. But -- but it may also not be the case.

17 MR. MCKINSEY: No. And, in fact, I think I --
18 the -- I think the intervenors would say that we've always
19 been respectful of their interests as well. And that while
20 I think we have to negotiate directly with the city in terms
21 of this discussion, the sooner that we are able to at least
22 involve them and inform them of what we're thinking about to
23 ensure that they're able to opine on it to the committee
24 is -- serves the function of the committee, which is to
25 really evaluate whether they found the right way to ensure

1 an extraordinary public purpose.

2 And so we'll endeavor to accomplish that one way
3 or another. One would be to perhaps have -- circulate to
4 the parties if we can, and I don't -- I'm not committing to
5 this, a draft version of something so that they're able to
6 opine on it, even though the final one may show up on the
7 deadline. Or maybe if we can finish it a few days early,
8 make sure all the parties see it and have the chance to
9 comment on it.

10 HEARING OFFICER KRAMER: Okay. Just a couple
11 follow-up questions. Among the issues that we mentioned in
12 our -- our statement of the -- the issues, so to speak, was
13 the cost of removable and financing those costs.

14 And let me ask as a precatory question, is
15 financing really an issue for this, the removal efforts, or
16 is -- is -- are the costs within the range of what, for
17 instance, NRG can handle? Or do they -- are they looking
18 for some assistance from the city, maybe in terms of a loan
19 or something like that?

20 MR. MCKINSEY: The -- the removal and -- and
21 demolition of the existing facility is not the type of
22 expense that's comparable to say construction of a new
23 facility. So it's not the cost, per se, but it is the
24 spending decision that -- that both NRG, as well as the
25 city, has a responsibility to its constituents when it

1 spends money. And so NRG has to be able to say to its
2 shareholders, you know, we're investing the expenses for the
3 following reasons. And so that's really the decision.

4 But in terms of having to satisfy lenders to
5 complete a demolition that wouldn't probably be the case.

6 HEARING OFFICER KRAMER: Okay. Well, we'll just
7 throw it out that it, you know, it might seem somewhat fair,
8 assuming that the city, as legend has it, has, you know, has
9 some money in their redevelopment accounts that this might
10 be a good use, you know, to -- to loan it, perhaps, if they
11 want to accelerate the -- the demolition if -- you know,
12 kick in a little bit if necessary. And it's just a thought
13 we -- we think the party's should explore and perhaps
14 discuss later.

15 MR. MCKINSEY: Just to clarify the record, the
16 redevelopment accounts are separate from the city's general
17 fund. And while the city's general fund does maintain a
18 reserve balance the city's redevelopment agency is actually
19 underwater in this area due in part to the diminishing value
20 of the existing power plant, based on what the current
21 valuation is, so there is limited ability to loan money.
22 But there are other protections that are afforded
23 redevelopment agencies that we would be I think open to
24 discussing with the company.

25 HEARING OFFICER KRAMER: Okay. And that's all we

1 want to do today is provoke that discussion.

2 COMMISSIONER BOYD: At least you didn't say, and
3 you guys want to take the money back to Sacramento anyway.

4 HEARING OFFICER KRAMER: Okay. My -- it's my
5 impression that we've exhausted that topic then. Does
6 anybody disagree? Okay.

7 That leaves us with the remaining topic which was
8 the -- the lessons from the recent earthquake and tsunami in
9 Japan. This was already, in general, earthquakes, seismic
10 issues that were called, tsunamis, and even liquefaction
11 which was brought up by a gentleman making a public comment
12 last night, are addressed in the decision. So we'd be
13 curious to -- to hear what -- what else is -- might be
14 relevant and suggest that either revisions or other changes
15 to the -- to the discussion in the decision.

16 Dr. Roe had submitted -- well, he thought he had
17 submitted, his -- his party, a report. It was the CEC's --
18 let me get to it here -- AB 1632 report, which basically was
19 directed at the nuclear facilities in California. But he
20 wanted that to be considered; either we take notice of that,
21 which we can do, or that become an exhibit in this case.
22 And he wanted to question staff and perhaps the applicant's
23 witness on the -- the applicability of some of the
24 conclusions in that report to this project, and perhaps
25 other matters as well.

1 Is that correct, Dr. Roe?

2 DR. ROE: That's -- yes.

3 HEARING OFFICER KRAMER: Okay. Now I don't know
4 if anybody else has the AB 1632 report. I -- I pulled it up
5 just now from the Energy Commission website. Do we need a
6 couple minutes for people to familiarize themselves?

7 Mr. Weaver, you're on the phone?

8 MR. WEAVER: Yes, I'm here.

9 HEARING OFFICER KRAMER: Okay. And you're the
10 staff witness on this question; correct?

11 MR. WEAVER: Yes.

12 HEARING OFFICER KRAMER: And have you had a chance
13 to look at that report?

14 MR. WEAVER: Yes, I have.

15 HEARING OFFICER KRAMER: Okay. Mr. McKinsey,
16 do -- do your folks need a little bit of time?

17 MR. MCKINSEY: Our witness isn't familiar with
18 that particular report. But we did prepare Mr. Mason to the
19 ability to -- to address the -- the -- I think what will be
20 the same topic which is these lessons learned and
21 consequences and -- and tsunami and earthquake risks.

22 HEARING OFFICER KRAMER: Okay. And Dr. Roe, you
23 had just a couple pages you were reading from; is that
24 correct?

25 DR. ROE: That's correct.

1 HEARING OFFICER KRAMER: So could you share that
2 with Mr. Mason for just a minute or so, or could he be
3 looking at that while you're asking your questions?

4 DR. ROE: Yes.

5 MR. LAYTON: Casey is not a witness on this, but
6 he's available today. He's not a witness. He's never been
7 sworn.

8 HEARING OFFICER KRAMER: No. We can swear him.

9 MR. LAYTON: Okay.

10 HEARING OFFICER KRAMER: That's fine. I'm just
11 trying to get it set up and see if we need to take a couple
12 minutes to have Mr. Mason look at it.

13 And so, Dr. Roe, could you give your copy then
14 to -- to Mr. Mason here so he can take a look?

15 DR. ROE: Sure.

16 HEARING OFFICER KRAMER: And if -- and if you --
17 if you need to look at it, as well, you could -- you could
18 sit alongside him at the table and ask your question, if
19 necessary.

20 DR. ROE: Over there?

21 HEARING OFFICER KRAMER: Sure. If you need to
22 share the documents, for instance.

23 DR. ROE: Okay.

24 HEARING OFFICER KRAMER: And is anybody objecting
25 to the -- to the use of the AB 1632 report?

1 MR. MCKINSEY: Hearing Officer Kramer, the one
2 point we wanted to emphasize just to provide clarity, and I
3 think it's particularly important here from a fear or a risk
4 perspective is that when evaluating a nuclear power plant
5 for the hazards or risks associated with earthquake and
6 tsunamis, what we learned, if we didn't already know it and
7 we should have known it, was that nuclear plants by virtue
8 primarily of decay have a vulnerability and -- that -- that
9 the tsunami and the earthquake demonstrated very clear, to
10 sustained power and cooling provisions. Whereas when you
11 look at a power plant that -- that doesn't have that, say a
12 natural gas-fired one, or even a wind facility, you have an
13 electric hazard and perhaps an explosive natural gas hazard.
14 Very different.

15 And from the perspective of a tsunami washing over
16 the -- in one sense it's -- it's a significant economic risk
17 for the project owner, obviously, if -- if a project is
18 inundated. And from a reliability perspective there's an
19 interest in -- in a project, you know, being able to survive
20 a tsunami or an earthquake and still operate.

21 And I think the comments that were made last night
22 were an example. Commissioner Boyd pointed out that
23 California has some of the strictest, if not perhaps in the
24 world, definitely in the United States, building standards
25 for earthquake safety and security. And so this report is

1 focused on nuclear power plant risk assessment and not a
2 gas-fired power plant perspective. And so to some extent
3 it's focused on risks that aren't as relevant. But that
4 doesn't mean that there aren't a reliability question.
5 And -- and it's worthwhile understanding and ensuring, and I
6 think the building standards do accomplish that, that there
7 wouldn't be a gas explosion from the gas powered -- the gas
8 that's being provided onto the plant. But it's a very
9 different risk perspective.

10 And so with that comment we don't have any issue
11 with this being admitted. But we just wanted to -- we
12 didn't want there to be a perception that the same risks and
13 hazards associated with nuclear power plants would be
14 present in a natural gas-fired power plant.

15 HEARING OFFICER KRAMER: Okay. And I assume that
16 will come out in the testimony again since you're not a
17 witness, but somebody will --

18 MR. MCKINSEY: Well, you were asking about
19 admission. And I just --

20 HEARING OFFICER KRAMER: Right.

21 MR. MCKINSEY: -- I wanted --

22 HEARING OFFICER KRAMER: Yeah.

23 MR. MCKINSEY: That was really more of a public
24 comment to -- to the extent that, you know, if we have any
25 attendees that they just understand that difference. I --

1 HEARING OFFICER KRAMER: Right.

2 MR. MCKINSEY: I really don't intend that as a
3 testimony but as a comment.

4 HEARING OFFICER KRAMER: Okay. Yeah. I think we
5 understand that it -- it's very different when the fuel
6 itself can not be shut off, in effect. And when you quit
7 cooling it then bad things happen to nuclear fuel.

8 So, Mr. Weaver, can you raise your right hand so
9 you can be sworn as a witness.

10 MR. WEAVER: It's up.

11 HEARING OFFICER KRAMER: Do you swear or affirm
12 that the testimony you are about to give in this proceeding
13 is the truth and the whole truth?

14 MR. WEAVER: Yes.

15 HEARING OFFICER KRAMER: Okay. Thank you. Please
16 state --

17 MR. MCKINSEY: Hearing Officer Kramer --

18 HEARING OFFICER KRAMER: Yes?

19 MR. MCKINSEY: -- I just wanted to indicate that
20 Mr. Mason is our -- our witness for these questions, and he
21 was previously sworn --

22 HEARING OFFICER KRAMER: Okay.

23 MR. MCKINSEY: -- at our evidentiary hearings a
24 year ago.

25 HEARING OFFICER KRAMER: Okay. So Mr. Mason was

1 previously sworn.

2 So first, Mr. Weaver, please state your name and
3 spell your last name for our court reporter.

4 MR. WEAVER: May name is Casey Weaver,
5 W-e-a-v-e-r.

6 HEARING OFFICER KRAMER: Okay. You might spell
7 your first name for her, too, so she gets that.

8 MR. WEAVER: That's C-a-s-e-y.

9 HEARING OFFICER KRAMER: Thank you. And then,
10 Mr. Mason, if you could do the same?

11 MR. MASON: Yes. Robert Mason, M-a-s-o-n, with
12 CH2M Hill, representing the applicant.

13 HEARING OFFICER KRAMER: Okay. I believe the only
14 party who -- who's here that wants to cross-examine is Power
15 of Vision. But after they go we'll let the city and the
16 staff ask any questions they would like to.

17 So Mr. -- Dr. Roe, go ahead with your questions.

18 CROSS-EXAMINATION OF MR. WEAVER

19 DR. ROE: Mr. Weaver, I'd like to thank you for
20 getting out of your sick bed to come and testify this
21 morning. I appreciate that.

22 MR. WEAVER: I hope you can understand my garbled
23 language here.

24 DR. ROE: I understand you're a geologist?

25 MR. WEAVER: Yes, that's correct. I'm a

1 professional geologist and a certified engineering
2 geologist.

3 DR. ROE: Good. You indicated to Mr. Kramer
4 earlier that you are familiar with the AB 1632 report.

5 MR. WEAVER: Yes.

6 DR. ROE: And maybe for those who are not so
7 familiar, let me read a paragraph from page seven, which
8 will lead to my question about your knowledge of this
9 matter. The paragraph says that,

10 "The major uncertainties regarding the seismology of
11 the SONS," that's the San Onofre site, "relate to the
12 continuity structure earthquake potential of a nearby
13 offshore fault zone, the South Coast Offshore Fault
14 Zone. And the faulting connects -- and that connects
15 faults in the Los Angeles and San Diego regions. There
16 is also uncertainty regarding the potential for blind
17 thrust faults near the plant. Well-planned high
18 quality three-dimensional seismic reflection data at
19 strategically chosen locations may resolve many of the
20 remaining uncertainties and might change current
21 estimates of the seismic hazard at the plant."

22 The report goes on to recommend that the owners
23 and other people conduct further studies on these issues.

24 Are you familiar with any ongoing studies to
25 this -- addressing this issue?

1 MR. WEAVER: There's a proposal by Southern
2 California Edison to conduct the 2-D and 3-D seismic
3 evaluations. And there's a proposal out for that work to be
4 done.

5 DR. ROE: There's a proposal to conduct that work?

6 MR. WEAVER: Yes.

7 DR. ROE: Do you have any feeling as to when such
8 additional surveys may be conducted?

9 MR. WEAVER: You know, there's a lead time from
10 getting authorization from the CPUC for the rate change to
11 finance that and doing the work. So you're looking
12 somewhere in the neighborhood of three years to -- to have
13 that work completed, is -- is my current understanding.

14 DR. ROE: So the -- okay. Are you familiar with
15 how the California Building Code uses the seismic study or
16 the seismic surveys to ascertain the design criteria for
17 non-nuclear power plant?

18 MR. WEAVER: In a general way.

19 DR. ROE: Could you elaborate?

20 MR. WEAVER: Well, the California Building Code
21 uses the zone areas for various acceleration spectra, I
22 guess. They -- they zone parts of California from one to
23 four, four being the highest. I don't know what that
24 threshold is to go from a three to a four, but it's the
25 highest level. So they have specific requirements for

1 construction based on -- you know, for -- for that
2 particular zone to -- to -- yeah. That's how they develop,
3 you know --

4 DR. ROE: I see. And --

5 MR. WEAVER: -- from the building code.

6 DR. ROE: And do you have any feeling for how long
7 it would take the California Building Code to be revised in
8 the event that a future survey shows that the current
9 estimates of earthquake fault dangers or an underestimate
10 and have to be revised upwards?

11 MR. WEAVER: No. I don't have a very good handle
12 on how long it would take to revise a document like that.

13 DR. ROE: Okay. I raise that issue because in one
14 of the responses to POV's original request that this issue
15 of earthquakes and tsunamis be brought up, the applicant
16 replied that they will conform to the latest building codes.
17 And in effect, at a time not later or not earlier, I
18 forget, but 180 days prior to their submission of the plans.

19 In other words, from what you tell me it might
20 take three, certainly three to more years for the surveys to
21 be done, and if any corrections are needed for the building
22 code to be amended. Whereas the applicant, if the
23 commission approves this project, will be able to submit
24 their plans the day after the approval and they would be
25 able to construct the plant according to their -- the

1 current criteria, which in Section 4.5.3.5.2 of the AFC
2 states that the design will conform to a 10 percent,
3 probably, of being exceeded in 50 years at a value of .27
4 Gs. And so that value may not be changed for many years.

5 In your work on -- for the commission -- for the
6 commission, for the staff, in looking at the effects of
7 earthquakes -- not tsunamis now but earthquakes -- are --
8 are you familiar with the Kashiwazaki-Kariwa Nuclear Power
9 Plant problem that occurred in May of 2007?

10 MR. WEAVER: Yes, I am.

11 DR. ROE: Good. There's an example where a plant
12 was designed for a relatively -- for -- I'm trying to see if
13 I have the information on the design criteria for that
14 plant. But what happened there was a relatively small
15 earthquake; it was only 6.6 on the Richter scale. They
16 experienced an earth movement two-and-a-half times that of
17 the design criteria, resulting in a shutdown of that power
18 plant for 21 months.

19 That had a significant effect on the Japanese net
20 because Kashiwazaki-Kariwa Nuclear Power Plant is by far the
21 largest one in the world. They were shut down for
22 structural reasons. The found structural deficiencies.
23 There was some minor damage. Fortunately, there was no loss
24 of life. But again, one of their major infrastructures were
25 shut down for almost two years. Now that was a 6.6

1 earthquake.

2 You're also -- you're, I'm sure, Mr. Weaver, you
3 are also familiar with the Sylmar quake; are you not?

4 MR. WEAVER: The Sylmar?

5 DR. ROE: Yes.

6 MR. WEAVER: Yes. Uh-huh.

7 DR. ROE: Which was a 6.6 earthquake in which the
8 ground movement that was experienced was a 1.7 or 1.8 Gs.
9 Now what struck me when I saw the .27, I said, well, okay,
10 that plant -- there's always redundancy. Engineers design
11 with a factor of safety of three, four sometimes. Maybe it
12 could survive without major damage. But if I look at the
13 Sylmar earthquake and I see that the ground movement in a
14 6.6 earthquake was almost 8 times the design criteria, it
15 raises some concern in my mind.

16 And I'm wondering whether we are caught in a Catch
17 22 here where the plant can be built to standards that may
18 not reflect the -- the true severity of an earthquake. And
19 even if they did reflect the severity of the earthquake, it
20 may be subject to earth movement and therefore structural
21 damage, maybe not life threatening, but certainly severe
22 enough to put this power plant out of operation at the very
23 time when it would be important to support -- to operate as
24 a local load center when the earthquake may have damaged
25 transmission lines bringing energy to this area.

1 So this plant is touted as being an important load
2 center in times of emergencies. And yet there seems to the
3 possibility, looking at the Kashiwazaki-Kariwa example that
4 it will not -- it could not be available when we most needed
5 it.

6 Now three to five years to wait to get the
7 information may be a little bit too long to wait on this --
8 on this project. But I strongly urge that the staff and the
9 commissioners do -- have some further consideration given to
10 the possibility that the proposed earthquake design criteria
11 be increased.

12 Again, speaking as an engineer, increasing the --
13 doubling -- doubling the ground movement requirement from
14 .27 to .5 is not a major cost consideration in the design of
15 this plant. It -- it certainly would ensure that the
16 foundations were more secure. I'm particularly concerned
17 because I've been involved in the design of gas and steam
18 pipelines, and I know of their susceptibility to earthquake
19 damage. And the additional cost for putting in better
20 hangers on these pipes and better earthquake provisions is
21 not a major cost. And I urge the commission to reconsider
22 the design -- the -- the .26 G design criteria for that
23 plant.

24 HEARING OFFICER KRAMER: I don't know if that was
25 a question exactly. But, Mr. Weaver, do you have any

1 response to that request?

2 MR. WEAVER: I -- I didn't write that section. I
3 don't know what methodology was used to arrive at that
4 acceleration. Typically, you know, there's science involved
5 where people will look at the type -- type of faulting and
6 size of earthquake that's likely to occur, look at the soil
7 characteristics and determine, you know, the probably
8 maximum ground acceleration based on the existing
9 information.

10 HEARING OFFICER KRAMER: And is some of that --
11 does -- are -- are some of those factors reflected in the --
12 the designation of the earthquake zone? So in other words,
13 if it's designed under the building code for the particular
14 earthquake zone that it's been identified as residing in do
15 you believe the appropriate factors are applied?

16 MR. WEAVER: That's -- I think that's more of an
17 engineering question.

18 HEARING OFFICER KRAMER: Okay. Did you have any
19 more questions, Dr. Roe? No. He says no.

20 Mr. Mason, on behalf of the applicant, did you
21 want to respond to his, in effect his request to increase
22 the -- the -- the particular design parameter?

23 CROSS-EXAMINATION OF MR. MASON

24 MR. MASON: Well, I think what's important to
25 recognize -- of course, I think we all do -- is that as new

1 information is developed and investigations are accomplished
2 our standards continue to change, and they will continue to
3 change in the future. What was learned from the Northridge
4 Earthquake and the Sylmar Earthquake reflect what we have in
5 our building codes today, and our seismic codes, which are
6 much more stringent than they were at that time. You know,
7 humans are fallible, obviously. And as new information
8 comes about we have to take those things into consideration.

9 Now the -- in terms of -- of -- of the project,
10 clearly it's going to be designed to all standards. There
11 will be site specific investigations to ensure that we are
12 applying the appropriate standards and site conditions.
13 That is part of -- of any engineering requirement for large
14 infrastructure projects such as a power plant. We work
15 diligently with staff and with experts in terms of ensuring
16 that that investigation is done properly, that it has the
17 appropriate peer review.

18 Again, in terms of the standards, they do apply a
19 factor of safety. The intent is not just to meet the
20 requirement but to apply that factor of safety
21 appropriately. Is it an exact science? No. The -- the
22 process continues. It goes through -- I guess I'll stop at
23 that point.

24 HEARING OFFICER KRAMER: Are the -- are the risks
25 from seismic damage to a natural gas-fired plant the same as

1 they are to a nuclear plant? If you could just briefly
2 explain the difference if there is one.

3 MR. MASON: Well, I think clearly any power plant,
4 whether it is -- is fossil-fueled, natural gas or a nuclear
5 plant, are complex structures and have control systems. It
6 really becomes, you know, a subjective discussion, I
7 suppose, to a certain degree. Clearly given the fuel
8 source, a nuclear facility has much more dire consequences
9 in terms of -- of -- of some sort of issue of release of
10 some sort. A natural gas facility, while it would, you
11 know, potentially, you know, result in some sort of damage,
12 we also have, I think, have to take into account that
13 infrastructure throughout the state and the nation, not only
14 power plants but it's waste water treatment facilities, like
15 you said, it's transmission, highways, all those things are
16 vulnerable to the same things we're talking about.

17 If a gas-fired plant goes out of service or if
18 it's damaged, yes, there's going to be obviously an issue
19 for electrical issues. But in terms of comparing risk to
20 human health, if we want to go to that extent, obviously
21 damage in a nuclear facility is much more of a concern than
22 it would be for a gas-fired facility. You know, I mean, to
23 put it bluntly, so CECP goes off line. Yes, it's going to
24 be inconvenient. Yes, it's going to affect the region.
25 That's going to be the same thing that happens with the

1 other gas facilities, as well.

2 If something like SONS or Diablo were to have a
3 situation similar to some of the things that we've seen
4 occurring in Japan, those would far outweigh and outstrip
5 any concern that I think any person would have over the fact
6 that CECP is offline.

7 Obviously, the -- the intent is this will be
8 designed to the highest standards as -- that are applicable.

9 As things come out during our process, if there are lessons
10 learned or facts that result in changes to code
11 requirements, obviously those will be accomplished. But it
12 also -- at some point it is a fixed point in time. They are
13 the codes that we have. And I think I'll stop at that
14 point.

15 HEARING OFFICER KRAMER: And one of the
16 differences is, is that nuclear fuel needs to be kept cold,
17 whereas with a gas plant you can -- you can turn a valve and
18 shut off a gas supply; right?

19 MR. MASON: That's correct.

20 HEARING OFFICER KRAMER: I think -- did any other
21 party have any cross-examination or any questions for the
22 witnesses?

23 DR. ROE: Mr. Kramer, can I cross Mr. Mason on
24 the issue of tsunami, which we haven't discussed?

25 HEARING OFFICER KRAMER: Okay. Yeah. I was about

1 to asked. We mentioned we hadn't discussed tsunami at all.
2 Go ahead.

3 DR. ROE: Recognizing that the potential for
4 tsunami damage to that plant are probably not as critical as
5 the earth acceleration that we discussed earlier, has the
6 applicant done any further investigation into the potential
7 hazard from a tsunami to the embankment that separates the
8 lagoon from the pit?

9 MR. MCKINSEY: Can I ask what you just mean by
10 further? Can you explain what you mean by further?

11 DR. ROE: Well, have they done any investigation?
12 Let me put it that way.

13 MR. MASON: There has been a preliminary
14 investigation done of -- and also based upon previous
15 studies accomplished at the state level this area is shown
16 to have, I believe it's a .3 to 3 foot maximum effect
17 from -- rise from a tsunami. The plant base grade is at 35
18 feet. As with other seismic issues, as investigations,
19 site-specific investigations are conducted we will evaluate
20 that run-up requirement, as well.

21 DR. ROE: Mr. Mason, do you know the elevation at
22 the bottom of the pit?

23 MR. MASON: I would have to go back and check.
24 I'm not sure that I have that off -- right off the top of my
25 head.

1 DR. ROE: Mr. Piantka, maybe --

2 MR. MCKINSEY: Are you -- do you want the answer
3 to that or is that a --

4 DR. ROE: I want the answer to that because it
5 refers to what I am going to ask about that.

6 MR. MCKINSEY: That is 3-0 feet, I believe 3-0
7 feet.

8 DR. ROE: 3-0 feet?

9 MR. MCKINSEY: Yeah.

10 DR. ROE: Good.

11 HEARING OFFICER KRAMER: That's above sea level?

12 MR. MCKINSEY: Yes.

13 DR. ROE: Good. Thank you. Admittedly I agree
14 with you that there's probably very little likelihood that a
15 tsunami will crest over the top of that embankment, 30 -- I
16 think it's 31 foot -- foot at the lowest point by the
17 railroad.

18 However, when tsunamis enter an estuary would you
19 agree that there's an increase in the velocity of the flow
20 of the water along the embankments, leading to increased
21 erosion dangers?

22 MR. MASON: Based upon recent tsunamis, and even
23 the ones that struck the U.S. after the earthquake in Japan,
24 clearly harbors and estuaries and things like the lagoon are
25 susceptible. There is probably some difference in terms of,

1 even along the West Coast, in terms of where there are sites
2 that are more prone to tsunami run-ups based upon geography
3 and land form. Crescent City is one of those, obviously.
4 We did see, though, obviously, I think we all saw news where
5 there was effect at Redondo and these types of things.

6 There is a potential. The lagoon is -- has some
7 protection. As part of the evaluation it will be looked at
8 to see whether or not additional buffering protection of the
9 bank might be required, and if it is it will be
10 accomplished.

11 DR. ROE: The AFC indicates that embankment that
12 separates the estuary from the pit is of unconsolidated and
13 in some places uncertain composition. Does the applicant
14 plant to conduct any further efforts to consolidate that
15 embankment or place riprap along the face of that embankment
16 to reduce the possibility that increased velocities of the
17 flow of the water along that embankment may erode that
18 embankment to the point where whatever the crest level of
19 the tsunami is flows into the pit and floods it, since it's
20 only three feet above the normal estuary level?

21 MR. MASON: I think as the investigation goes
22 forward and as issues are identified appropriate analysis
23 will occur. I can't say at this moment exactly what that
24 investigation may or may not be. But I would seem
25 reasonable that as part of any engineering geo-technical

1 investigation that will occur, if there is risk identified
2 along something of those then appropriate evaluation would
3 be accomplished.

4 DR. ROE: Well, I'm just trying to point out that
5 there may be a potential risk because of the uncertainties
6 of that embankment. And I would hope that the applicant, at
7 whatever point, would take further steps to either
8 investigate or protect that embankment from possible
9 erosion.

10 MR. MASON: We understand your concern and your
11 point.

12 DR. ROE: Okay. Thank you.

13 HEARING OFFICER KRAMER: Okay. I think everyone
14 else answered earlier that they had no questions, so we can
15 close up this topic.

16 COMMISSIONER BOYD: Well, don't close it until
17 you've --

18 HEARING OFFICER KRAMER: Commissioner Boyd.

19 COMMISSIONER BOYD: -- I've had my comments here,
20 several things.

21 First, Dr. Roe, let me say I've -- I've
22 appreciated and enjoyed your participation in these
23 hearings, and I respect your knowledge on -- on a host of
24 subjects.

25 Secondly, let me say that the -- the -- the PMPD,

1 as we call it, has a fairly detailed discussion of seismic
2 and -- and geologic aspects of this project, and several
3 conditions with regard to additional studies that -- that
4 are seen as necessary to the eventual construction of this
5 facility. And I would -- and I want -- I want -- I also
6 want to bring up something that was brought up last night.
7 One gentleman here had extensive discussion about
8 liquefaction.

9 If you read the PMPD you'll see that it recognizes
10 that liquefaction is an issue. And while he made a
11 significant issue out of the fact that this is all fill
12 area, I think the staff's previous documents in the PMPD
13 make reference to both long-standing existing geologic
14 formations, and of the fact that there are -- there is some
15 fill and there are requirements therefore to look into that
16 issue before commencing construction of the facility.

17 Let me switch to AB 1632 and just for the record
18 indicate that I have intimate familiarity with this report.

19 I oversaw its preparation, both because at that time I
20 happened to be a member of the Integrated Energy Policy
21 Report Committee of the commission that directed this study
22 be part of our integrated energy policy report a few years
23 back, and secondly because of my continuing responsibilities
24 as a state liaison to the Nuclear Regulatory Commission.

25 And I can assure you I have -- and the commission

1 has, and Mr. Weaver with whom I've interacted a lot over the
2 past couple of years, we have very closely followed
3 developments in Japan relative to the first earthquake, and
4 certainly relative to the most recent earthquake, and have
5 submitted a large amount of testimony to the Nuclear
6 Regulatory Commission and to the -- and letters to the
7 utilities relative to the need for these 3-D seismic studies
8 at relates to the two nuclear plants. AB 1632 wasn't
9 directed solely at the nuclear plants. It was -- it was
10 directed at large plants in California. It just so happens
11 the threshold criteria was such that only the two nuclear
12 plants ended up need the criteria for this in-depth
13 discussion. And that probably was a product of the author
14 of the bill's desires, then Assemblyman Blakeslee, whose
15 territory at the time -- and now Senator Blakeslee whose
16 area of responsibility includes the Diablo Canyon plant, is
17 a geologist seismologist and has extensive knowledge, and
18 we've worked very closely with him.

19 We have been urging the two -- the -- the owners
20 of these two plants, PG&E owns Diablo, Edison is a majority
21 owner but SDG&E a monitory owner of SONS, do to these 3-D
22 studies. And -- and it's been -- it's been a tough push or
23 pull. However, the most recent earthquake in Japan has left
24 it pretty obvious these studies need to be done.

25 So as indicated, the utilities are taking steps

1 now to -- to undertake these 3-D studies. I, and probably
2 you, wish they had been done some time ago. It wasn't --
3 it's inevitable now that it will be done. The timing is
4 such that it -- it will be -- it will take into the future
5 to have it done. And we expect a lot of information to
6 either confirm or deny that there's any more additional risk
7 offshore California to, A, the two nuclear plants and, B,
8 just to further our knowledge base on seismic activity along
9 the coast and its affect on -- on the coastline and -- and
10 structures in the coastline vicinity. So quite possibly
11 we'll learn more.

12 Not wanting to get engaged in -- in any
13 international incident, I'll just say my personal
14 reflections rather than official CEC reflections on why the
15 Japanese sited their nuclear plants where they sited them
16 remains somewhat of a mystery to an awful lot of people.
17 Knowing they had that significant subduction zone off of
18 offshore Japan and why they put that plant where they did
19 and why they did not anticipate what they saw is something
20 history will have to shed more light on.

21 I feel reasonably confident California has done
22 and California's utilities have done a better job. But I
23 think the utilities in question know full well that I have
24 been breathing down their back for years to push the need to
25 get more data and knowledge.

1 With regard to the -- to the new nuke plants it's
2 really because they're -- one has filed for and one has
3 indicated intention to file for relicensing. And while the
4 NRC says it takes all this into account, literally on a
5 daily basis, they haven't shown me they've done a very good
6 job. They have not shown California politicians. They have
7 not shown our senators. And we had a hearing in Washington
8 a few weeks ago which Senator Blakeslee and I testified as
9 to the need for these types of studies, and I think they
10 will be done.

11 I say all this just so the public knows and the
12 record shows that the CEC and -- and staff and
13 commissioners, and it just so happens this commissioner,
14 have been deeply involved in questions about seismic safety
15 of -- of the California infrastructure. And as Mr. Mason
16 indicated, we as a human species learn more every day about
17 things. And future rules and regulations reflect what we
18 learn.

19 Some people probably might remember that the
20 Diablo Canyon plant was virtually redesigned and then later
21 even additional upfitted as a result of the discovery of the
22 first offshore fault, the so called Hosgri Fault. The cost
23 of the -- of the Diablo Canyon plant went from millions of
24 dollars to billions of dollars as a result of some of that
25 activity. And nonetheless, you know, our -- the studies

1 continue to go on and we impart that knowledge to all the
2 rules and regulations that -- that we have here in
3 California, and it could well effect the building codes.

4 I think we recognize the risk factor associated
5 with a gas-fired plant located slightly more inland but --
6 but adjacent to -- to an estuary is -- the risk to the
7 public is significantly less than -- than the risk we have
8 with regard to a nuclear facility. And I'm sure Dr. Roe
9 knows this, perhaps better than I. And Mr. Kramer
10 indicated, you've got to keep the -- the fuel in the spent
11 fuel pool cool. You've got to keep the reactor cool and the
12 fuel in that reactor. And we've all witnessed the difficult
13 of that in what has occurred in Japan. So we have a lot of
14 activities underway in this state to try to make our
15 utilities make that spent fuel safer.

16 In any event, the -- the issue has been fairly
17 well discussed in the PMPD. And this committee was
18 reasonably confident that this staff has gone to great pains
19 to see that anything that can be known will be identified
20 and applied to the -- the construction of this plant. But I
21 think we're all -- we've all increased our concern as a
22 result of what happened in Japan. And -- and it probably
23 will affect our thinking with regard to the construction of
24 the physical facilities and the coast and tsunamis and
25 earthquakes in future years.

1 So there's a pretty substantial knowledge base at
2 the CEC on the subjects, and hopefully it's been employed
3 the maximum extent practical and feasible in the criteria
4 laid out with regard to -- to the construction and operation
5 of this -- of this particular plant.

6 And -- and Dr. Roe, I appreciate your concerns.
7 You made some very good points. And we are continuing to --
8 to look at the issue. I think we all followed very closely
9 the -- the -- the effects of the tsunami and, you know, what
10 happens in a narrow passageway and -- and the basic physics
11 involved with the acceleration through a small channel of --
12 of a moving fluid. So I think we will take a good look at
13 what could happen in -- in that lagoon.

14 So enough said. I just wanted the record to
15 reflect that -- that the CEC has a pretty deep knowledge
16 base in this area and a concern, and we've tried to do the
17 best we can to address that.

18 Thank you, Mr. Kramer.

19 HEARING OFFICER KRAMER: Thank you, Commissioner
20 Boyd.

21 That will then close the topic of the -- the
22 lessons learned from the Japanese earthquake and tsunami.

23 So, Mr. Weaver, thank you for joining us.

24 MR. WEAVER: You're welcome. Thank you.

25 HEARING OFFICER KRAMER: And as well as -- I'm

1 having one of those moments --

2 COMMISSIONER BOYD: Mr. Mason.

3 HEARING OFFICER KRAMER: -- Mr. Mason. And we're
4 now to the point where we can conduct our housekeeping for
5 the hearing. And so let me put on the -- on the screen for
6 everyone to look at the exhibit list. And I've highlighted
7 in yellow things that were added for this hearing. So we
8 can go through them one by one, or we can start with the --
9 the applicant's set of exhibits. Hold on.

10 The first one is Carlsbad Planning Commission
11 Resolution 6632. Any objection to receiving that? Seeing
12 none. I'm just going to fill this in as we go.

13 The next is Exhibit 199. That's the -- their One
14 Hour Air Modeling Protocol for NO2, both an original and --
15 well, it looks like two revised versions. Any objection to
16 that?

17 MR. MCKINSEY: On that -- on that item I -- we
18 might want to come back to that only because I think it --
19 it may have also been submitted, at least we don't need
20 duplicate versions of the modeling.

21 HEARING OFFICER KRAMER: Oh. Okay.

22 MR. MCKINSEY: Did Staff provide that, as well, or
23 is that the only endpoint where it's an exhibit?

24 HEARING OFFICER KRAMER: Staff had their own, I
25 believe.

1 MR. RATLIFF: Staff filed its own, but we did not
2 file yours.

3 MR. MCKINSEY: Okay.

4 MR. RATLIFF: You docketed, as I understand it,
5 you docketed yours a year ago, more than a year ago.

6 MR. MCKINSEY: Yes.

7 MR. RATLIFF: But it was never made an exhibit.

8 HEARING OFFICER KRAMER: Okay. So then it should
9 be an exhibit now then. Okay. Seeing no objection.

10 The -- the next one, 199A, though, does appear to
11 be a duplicate of 197 here. So we will not receive that
12 one; do you think that's correct, Mr. McKinsey? Okay.

13 MR. MCKINSEY: Yes.

14 HEARING OFFICER KRAMER: 199B is housing and --
15 the City Housing and Redevelopment Commission Resolution
16 Number 420. Any objection to receiving that? Hearing none,
17 that's received.

18 Exhibit 199C as in Charlie is again a Housing and
19 Redevelopment Commission Resolution 477. Any objections?
20 Hearing none, that's received.

21 199D as in dog is the written testimony of Ronald
22 W. Rouse regarding the extraordinary public -- public
23 purpose issue. It was undated. Any objection to receiving
24 that? Hearing none, that's received.

25 And then 199E is a declaration of Mr. Rouse in

1 support of Exhibit 199D. Oops, I didn't delete the rest
2 of -- yes. There we go. Okay. I've corrected a typo, and
3 I've gone to far. So I think the -- the date of that may be
4 wrong. I think in one of these there was a typo and it was
5 actually dated -- mistakenly dated, I think in 2010.

6 MR. MCKINSEY: Yeah. That's -- yes. That should
7 be 2011.

8 HEARING OFFICER KRAMER: Okay. Well, if it says
9 2010 I guess I should 2010 on here. I'll check that later.

10 Anyways, any objection of receiving this into
11 evidence? Hearing none, that's received.

12 And then 199F as in Frank is the condition
13 regarding the shutdown of units four and five. That was
14 circulated by the applicant yesterday. Any objection to
15 receiving that? Hearing none, that is received into
16 evidence. Okay.

17 And then --

18 MR. MCKINSEY: Hearing Office Kramer, I verified
19 the date. 199E is indeed -- it says 2011 on it.

20 HEARING OFFICER KRAMER: It does say 2011? Okay.
21 Thanks.

22 Okay. Now let me page down to the next set. From
23 staff we have their Air Quality Impact Analysis Addendum 1
24 regarding NO2. That's Exhibit 226. Any objection to
25 receiving that? Hearing none, that's received.

1 And Exhibit 227 is the fire protection testimony
2 of Dr. Alvin Greenberg. Any objection to receiving that?
3 That's received.

4 Then from, what is this, Terramar we have a series
5 of exhibits. This list has all been circulated earlier.
6 It's 377 through 389. Is there any objection to receiving
7 any of these documents? Okay. Hearing none, those will all
8 be received.

9 And then from the city we have -- I think, Mr.
10 McKinsey, you -- you had objections to some of these; is
11 that correct?

12 MR. MCKINSEY: Correct. And I -- as I understand
13 the city is not going to submit for evidence 436, 441 and
14 442, which would be -- that's my numbers, so we should
15 probably make sure they match your numbers. 436, that's
16 correct. And then if you could scroll down to 441 and 442.

17 HEARING OFFICER KRAMER: Okay. So then with those
18 three exceptions, is that correct, Mr. Thompson?

19 MR. THOMPSON: That is. I do have one
20 housekeeping item before I would move these.

21 HEARING OFFICER KRAMER: Okay.

22 MR. THOMPSON: We neglected, I think, to have a
23 sponsor for 440. And what I would like to do is ask Mr.
24 Garuba a couple questions about that exhibit.

25 HEARING OFFICER KRAMER: Well, if the other

1 parties waive that requirement we could -- we could probably
2 dispense with that --

3 MR. THOMPSON: Okay.

4 HEARING OFFICER KRAMER: -- if they stipulate to
5 its entry.

6 Any -- Mr. McKinsey, is that fine?

7 MR. MCKINSEY: We have no issues with that. This
8 is the after action report. The -- the issue with it is it
9 just -- it isn't completely self-authenticating. Because on
10 the -- on the pages you really can't tell what it is.
11 And -- and so -- and that's why we're trying to figure out
12 what to call it.

13 HEARING OFFICER KRAMER: Right.

14 MR. MCKINSEY: And -- and so I think it is better
15 if we just have somebody say, yeah, that's an accurate copy
16 of the document or something.

17 HEARING OFFICER KRAMER: Okay. Go ahead then, Mr.
18 Thompson.

19 DIRECT EXAMINATION BY CITY OF CARLSBAD

20 MR. THOMPSON: Mr. Garuba, are you familiar with
21 what has been identified as Exhibit 440 and we're calling
22 the Escondido After Action Report?

23 MR. GARUBA: Yes.

24 MR. THOMPSON: Is it a true and correct copy of
25 the -- the report submitted by Escondido regarding the fire?

1 MR. GARUBA: To my knowledge, yes.

2 MR. THOMPSON: Do you know who in the city
3 received this report first?

4 MR. GARUBA: I believe it was Operations Fire
5 Chief Chris Heiser.

6 MR. THOMPSON: And to the best of your knowledge
7 it's true and correct?

8 MR. GARUBA: Yes.

9 MR. THOMPSON: Thank you.

10 HEARING OFFICER KRAMER: Okay. So then regarding
11 Exhibits 44 -- oh, I'm sorry, 43 --

12 MR. MCKINSEY: 440 and 441.

13 HEARING OFFICER KRAMER: Okay. So it's --

14 MR. MCKINSEY: Excuse me, 441 and 442.

15 HEARING OFFICER KRAMER: Yeah. So 435 to 443,
16 with the exception of 436, 441 and 442, will be admitted,
17 unless I hear an objection, and I hear none. So that is
18 what we will do.

19 And then from Power of Vision we have Exhibits 744
20 which is the AB 1632 report, and 745 which is a page from
21 the National Propane Gas Association website. Any objection
22 to the acceptance of those into evidence? Hearing none,
23 those will be accepted.

24 Exhibit 746 was a duplicate of 379, which was just
25 admitted. So it will not be admitted.

1 And 747 was a duplicate of 378 and similarly will
2 not be admitted.

3 And Mr. Simpson had nothing to add. So I --
4 that's the complete exhibit list.

5 Now I can't think of any other housekeeping items,
6 except if the parties want to make any particular oral
7 comment about the PMPD at this point in time we're willing
8 to accept those. Otherwise, we'll -- we'll take your
9 written.

10 MR. THOMPSON: I think that the -- I think Mr.
11 Ball had mentioned the motion for extension of time. I'm
12 not sure that you ruled on that.

13 HEARING OFFICER KRAMER: Right. Okay. We'll get
14 to that in a minute.

15 Let me first check and see if there are any
16 members of the public here who want to make a public
17 comment. There appear to be none.

18 MS. FREDINBURG: Yes. Hello?

19 HEARING OFFICER KRAMER: Oh. Okay. You're on the
20 telephone?

21 MS. FREDINBURG: Yes.

22 HEARING OFFICER KRAMER: Go ahead and give us your
23 name and spell -- spell it for us so the court reporter will
24 spell it correctly in the transcript.

25 MS. FREDINBURG: Certainly. And I was at the

1 hearing last night, as well, but I saw something in the
2 paper today that concerned me. My name is Catherine
3 Fredinburg, C-a-t-h-e-r-i-n-e, Fredinburg,
4 F-r-e-d-i-n-b-u-r-g. I'm a Carlsbad resident -- resident,
5 and I live on the Capri Tract across the lagoon from the
6 plant.

7 I did notice on the front page of the *San Diego*
8 *Union Tribune* Local section today the headline, "Bill Backs
9 Expansion of I-5 to 12 Lanes in North County." The proposal
10 calls -- now endorses a proposal to widen the freeway to 12
11 lanes. It revises Senate Bill 468 carried by Senator
12 Christine Kehoe, Democrat, San Diego.

13 So one of the concerns I think that was expressed
14 was that the expansion of the I-5 in the proposal has been
15 treated as a hypothetical and therefore not dealt with in
16 the level of detail that it should be. I'm hoping that this
17 issue that has come out here today in the paper will cause
18 some further detail to be put into the plan, how to deal
19 with the I-5 expansion. Clearly it's -- it's no longer just
20 a hypothetical.

21 And that would be the comment.

22 HEARING OFFICER KRAMER: Thank you.

23 MS. FREDINBURG: Thank you.

24 HEARING OFFICER KRAMER: Anyone else on the
25 telephone want to make a public comment? Okay. We'll close

1 the public comment again. Okay.

2 There were -- besides the city's motion there were
3 various motions made during the -- the time between the --
4 the close of the hearings February of last year and -- and
5 these hearings. Many of those were in effect wielded upon
6 by the committee's inclusion of some of the topics in the
7 topics to be considered yesterday and today.

8 To the extent that -- that a motion was made
9 previously to add to the record, and that includes a motion
10 from the applicant in February of 2010, motions from
11 Terramar, from the Center for Biological Diversity, from
12 Power of Vision, although I believe most of their motion was
13 granted in effect by the -- the discussions we had, and the
14 City of Carlsbad who I believe was the party to raise the
15 fire safety lessons learned, but to the extent those motions
16 were not in effect granted by the -- the way we set up the
17 hearings and the issues we put on the table, they are
18 denied, just to make things clear.

19 As to the city's motion to extend the -- the time,
20 both for public comment and for -- for the scheduling of the
21 business meeting to consider adoption of the PMPD, we're
22 going to go off the record for a minute and deliberate, and
23 we'll be back shortly.

24 (Off the Record From 10:26 a.m., Until 10:27 a.m.)

25 HEARING OFFICER KRAMER: We're back on the record.

1 The committee will continue the current deadline
2 for public comments which is June 8th. And to be clear that
3 received at the commission either by email to our dockets
4 unit or received physically in the -- in the U.S. Mail or by
5 personally delivery by 5:00 p.m. on June 8th. So postmarks
6 do not count. And so we will maintain that deadline and
7 continue the scheduled business meeting on June 15th, you
8 know, subject to later review if, you know, if it becomes
9 necessary to have more time, for the committee to have more
10 time to perform the work it needs to do in preparation for
11 that meeting. But for now we're going to maintain the
12 schedule as it was published.

13 And I think that covers all the pending motions.

14 So is there any other business we need to conduct
15 today?

16 MR. RATLIFF: Mr. Kramer, the staff has redrafted
17 one of the conditions, I think it was Worker Safety 11 to
18 meet the city's -- the city fire department's request that -
19 - that the city's water system would be the primary system.

20 But -- and -- and we also have redrafted, or actually we --
21 we are prepared to respond to clarify any uncertainty about
22 Worker Safety 8, which I think the committee was -- was
23 querying us about.

24 HEARING OFFICER KRAMER: Okay. That's --

25 MR. RATLIFF: We -- we can do that now, but we can

1 also do that in our response to comments, in our written
2 response to comments and --

3 HEARING OFFICER KRAMER: Well, let's take care of
4 that now. It will just take a minute. So you have a new
5 exhibit -- or a new condition.

6 MR. RATLIFF: It has not been distributed,
7 unfortunately.

8 HEARING OFFICER KRAMER: Is it available to be
9 distributed or --

10 MR. RATLIFF: Yes.

11 MR. MONASMITH: Well --

12 MR. RATLIFF: Can -- can we do that? Do we have
13 copies? Okay.

14 (Pause)

15 HEARING OFFICER KRAMER: Okay. So this new Worker
16 Safety 11 will be Exhibit 228. Does anybody object to its
17 entry into evidence?

18 MR. MCKINSEY: Applicant has no objections.

19 HEARING OFFICER KRAMER: Okay. Hearing none, then
20 it will be accepted into evidence, and I'll finish the
21 description here. Do any of the parties have comments about
22 this?

23 MR. THOMPSON: Preliminarily we think it does the
24 job. We would like to run it by the fire department
25 officials who are not here. But we think -- we think it

1 does it.

2 HEARING OFFICER KRAMER: Okay. So you can let us
3 know in your comments then.

4 MR. THOMPSON: Yes.

5 MR. RATLIFF: And the --

6 HEARING OFFICER KRAMER: Okay.

7 MR. RATLIFF: The other issue had to do with Soil
8 and Water 8. And I think the committee expressed some
9 uncertainty as to what staff agreed was acceptable in terms
10 of having personnel on the site during plant operations.

11 HEARING OFFICER KRAMER: Worker Safety 8 do you
12 mean or --

13 MR. RATLIFF: Yes. Is it Worker Safety 8?

14 MR. MONASMITH: Yeah, Worker Safety 8.

15 MR. RATLIFF: I'm sorry. Worker Safety 8.

16 HEARING OFFICER KRAMER: Yeah. The -- the concern
17 was that in the transcript of the hearing on this topic Dr.
18 Greenberg orally agreed with the changes that were proposed
19 by the applicant. And then -- and then down the road in one
20 of the -- one of the staff briefs you said you were opposed
21 to the change. And so I just wanted to -- to get clear
22 about what the staff's position was.

23 And then also if the applicant can tell me, did
24 we -- did we accurately capture the change you were looking
25 for in the -- the version that's in the PMPD?

1 MR. MCKINSEY: This is Worker Safety 8, correct,
2 the two worker?

3 HEARING OFFICER KRAMER: Right. It's about where
4 the workers have to be when the startup button is pushed.

5 MR. MCKINSEY: Yeah. We're not -- we have no
6 issues with that condition as it's drafted in the PMPD.

7 HEARING OFFICER KRAMER: Okay.

8 DR. GREENBERG: And, Hearing Officer Kramer, this
9 is Alvin Greenberg. I also concur with the wording in
10 Worker Safety 8 as written in the PMPD. It reflects an
11 agreement that the bowl, the actual site of the power plant
12 could be unmanned until startup. When startup commences
13 workers shall proceed directly to the bowl to be there while
14 the power plant is in operation.

15 HEARING OFFICER KRAMER: Okay. Great. Just as a
16 heads-up, we've been working on trying to make the
17 formatting of the -- the page numbering a little more
18 friendly. And we have a new concept that we may, if we have
19 time, spring in this -- in the -- well, actually it probably
20 won't be until the final decision is produced. But it will
21 make it a little easier for -- for you to figure out where
22 you are in the decision between one section relative to
23 another. Right now the -- you have to know that, for
24 instance, public safety is right ahead of worker safety.
25 And we're going to come up with a numbering scheme that is

1 more like the way the staff assessments are numbered, so
2 don't be surprised by that.

3 Was there any other business to conduct then?

4 MR. MCKINSEY: Did we assign an exhibit number to
5 the Worker Safety 11?

6 HEARING OFFICER KRAMER: Yeah. It's 228.

7 MR. MCKINSEY: Oh. Thank you. Thank you.

8 HEARING OFFICER KRAMER: It's just my computer
9 keeps giving me a message.

10 So any other business to conduct? Nobody's
11 indicating that we have -- Mr. McKinsey?

12 MR. MCKINSEY: Do you want party comments or --

13 HEARING OFFICER KRAMER: Oh, did you have some?
14 Go ahead.

15 MR. MCKINSEY: Yes. The president of NRG West,
16 Steve Hoffmann, is here and he wanted to make a couple of
17 comments.

18 HEARING OFFICER KRAMER: Please, go ahead. And
19 spell your name for the reporter.

20 MR. HOFFMANN: H-o-f-f-m-a-n-n. I just wanted to
21 comment and thank the commission and particularly the staff
22 for -- for their diligence. I know that this is -- it takes
23 a lot of work that not very many people can fully appreciate
24 because of its complexity. And especially the proceeding
25 went through a lot of furloughs and some other scheduling

1 problems that taxed the commission and their staff and I
2 think they are to be commended.

3 And I also wanted to thank the constructive
4 involvement of the community and all the intervenors because
5 these things can become much more difficult if the -- if the
6 parties aren't interested in a constructive outcome. And we
7 commit to working with -- with all the parties to resolve
8 some of these open issues. But thank you.

9 HEARING OFFICER KRAMER: Thank you. So with that,
10 Commissioner Boyd, did you have some closing remarks?

11 COMMISSIONER BOYD: Yes, thank you. Well, I, too,
12 will thank all the parties for their active participation in
13 this issue. This has been a long drawn-out hearing process
14 that possibly could have been concluded much earlier, were
15 there not other high-level priorities placed in front of the
16 staff of the CEC with regard to federal economic stimulus
17 money for certain type projects proposed throughout the
18 state.

19 And also were it not the fact that, as just
20 indicated, our agency, like all state agencies, has been
21 severely impacted in terms of its resources and its
22 flexibility by the state of the California economy. And
23 the -- the staff has done Herculean work the last year plus
24 on all the siting cases. I was very proud of them at the
25 end of last year when we tallied up the number of cases in

1 megawatts that came out of the commission. I was quite
2 pleased and surprised.

3 So they have really worked themselves to the bone
4 to try to -- to try to keep up with projects, and got this
5 one back on track. And while some people feel the timeline
6 is awful short now, in reality it's -- it's been
7 extraordinarily long. And we're just trying to -- to
8 conclude it rapidly. After all, the law says we -- we have
9 a year to do these kinds of things. And it's going to be a
10 very rare day that it can be done within a year, obviously.

11 In any event, I appreciate the ongoing
12 negotiations that have been stimulated by the discussions of
13 the last two days, if not the discussions over the past
14 many, many months. Maybe with or without any encouragement
15 from this committee hopefully we've contributed our sense of
16 concern and urgency to that issue. And I do look forward to
17 resolving this issue.

18 I did an unusual thing last night and did a little
19 bit of Energy 101 for the audience. I really for citizen
20 audiences that get quite concerned about our communities we
21 don't do it enough in explaining the real world.

22 And I left out Hearing Procedures 101 from my
23 lecture last night which I regret, because I don't think the
24 citizens in general understand the siting process,
25 understand that this is a very judicial process, understand

1 that ex parte communication laws are very strict, that we
2 can't even talk to our own staff except in this public forum
3 about cases. And lord knows what citizens think kind of
4 cozy relationships exist between commissioners and their
5 staffs. And I think many people are usually surprised and
6 shocked to learn that -- that we can't carry on
7 communications with intervenors or our staff other than in
8 this forum, that it's very judicial. And decisions are
9 predicated on the record established by these hearings, not
10 our visceral or emotional feelings about some of the issues
11 that are brought before us.

12 So at any event I look forward to concluding this
13 case in the not too distant future if -- if that is feasible
14 and possible. And I look forward to hopefully the citizens
15 in this area who have been very involved -- and believe me,
16 believe it or not we appreciate that. It's disappointing in
17 some parts of the state to speak over a period of years to
18 very tiny little audiences of folks showing the lack of
19 interest, except later on maybe in the press in -- in the
20 process and procedures. So I thank the citizens of this
21 area for their -- for their interest and for their courtesy.

22 And while there were some obviously strong
23 opinions expressed last night we commissioners understand
24 that and do a halfway decent job most of the time of
25 absorbing it. It's been almost -- well, I'm in my tenth

1 year as a commissioner and I've heard an awful lot of this
2 and I've learned a lot, and I appreciate peoples' point of
3 view. It's also a few weeks short of my 50th year as a
4 public servant in California, and it's been an interesting
5 experience.

6 So in any event, thank you all. And I look
7 forward to -- to continuing all of this -- all of our work
8 on a better California. Thank you.

9 And I guess, Mr. Kramer, you can adjourn the
10 hearings if there's no --

11 HEARING OFFICER KRAMER: Okay. So we're
12 adjourned. Thank you all for your participation.

13 (Thereupon the California Energy Commission,
14 Carlsbad Energy Center Project Notice of Availability of the
15 Presiding Member's Proposed Decision and Notice of Committee

16 Conference and Evidentiary Hearing and Notice of Full

17 Commission Hearing adjourned at 10:42 a.m.)
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CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference and Evidentiary Hearing; that I thereafter transcribed it into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference and evidentiary hearing, or in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May, 2011.

MARTHA L. NELSON - CERT 00367